

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566
<http://www.ca9.uscourts.gov/mediation>

MEDIATION QUESTIONNAIRE

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are *not* confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	13-17154
District Court/Agency Case Number(s):	5:08-CV-05780 LHK
District Court/Agency Location:	Northern District of California, San Jose Division
Case Name:	Facebook, Inc. v. Power Ventures, Inc., et al.
If District Court, docket entry number(s) of order(s) appealed from:	275, 373, 374
Name of party/parties submitting this form:	Power Ventures, Inc.

Please briefly describe the dispute that gave rise to this lawsuit.

Power Ventures, Inc. owned a social media aggregation website (www.power.com) that enabled users to log into and manage their social media accounts from a single website/account. In Dec. 2008, Power.com launched its Facebook integration with a promotion where users who signed up 100 friends received \$100. Users could invite their friends by creating a Facebook event page and sending it to their friends on Facebook. Facebook, Inc. discovered this promotion and promptly demanded Power cease operations. Power immediately responded and requested permission to continue operation while integrating the Facebook-approved "Facebook Connect" API, and the parties negotiated terms for continued operation over the next few weeks. Despite ongoing good faith negotiations, no evidence of damage or threat to Facebook, and Power's prompt efforts to comply with Facebook's API, Facebook filed this lawsuit in Dec. 2008. Ultimately, Facebook claimed violations of the CAN-SPAM Act, CFAA and CPC § 502 and requested compensatory damages and ~\$18M for maximum statutory damages based on ~60,000 emails sent through Facebook when users invited their friends to join Power.com

Briefly describe the result below and the main issues on appeal.

On February 16, 2012, summary judgment was granted to Facebook on all claims, and summary judgment was denied as to defendants. On September 25, 2013, the Court ordered damages totalling \$3,031,350 plus compensatory damages and found Vachani liable. Further, the Court granted Facebook's request for a permanent injunction against defendants.

The main issues on appeal are: 1) Did the Court err in concluding there is no triable issue of fact regarding the question of whether Facebook satisfied standing requirements for each private right of action? 2) Did the Court err in concluding there is no triable issue of fact regarding whether the activity at issue violated these three criminal statutes? 3) Did the Court err in concluding that Defendants' activities violated these statutes? 4) Did the Court err

in finding Vachani liable for the corporation's actions? 5) Is the permanent injunction overly broad as to prohibit otherwise lawful and non-injurious activity?

Describe any proceedings remaining below or any related proceedings in other tribunals.

Defendant Vachani is currently appealing a sanctions order in this court, Case No. 13-16795. Defendant Vachani is also currently litigating a Chapter 7 bankruptcy action in CAND Oakland Division, Case No. 4:12-bk-47150. Defendants will be filing a motion to stay execution of judgment and suspend permanent injunction in the District Court.

Provide any other thoughts you would like to bring to the attention of the mediator.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached
 (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list
 may result in sanctions, including dismissal of the appeal.

Signature /s/ Amy Sommer Anderson

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for Power Ventures, Inc.

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. To file this form electronically in Appellate ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into Appellate ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.

RULE 3-2 REPRESENTATION STATEMENT

- Plaintiff Facebook, Inc. is represented by
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2. Defendant Power Ventures, Inc. is represented by

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3. Defendant Steven Vachani is a *pro se* appellant.

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9th Circuit Case Number(s)

13-17154

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) 10/31/2013.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

/s/ Amy Sommer Anderson

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)